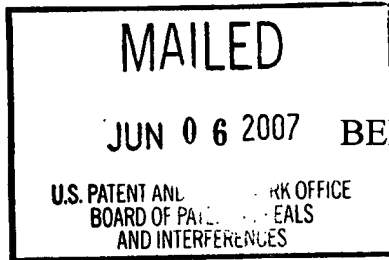


UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte JAY PAUL DRUMMOND, BOB A. CICHON, MARK D. SMITH,  
DAVID WEIS, JAMES R. CHURCH, and MIKAL R. GILGER

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Application 09/578,291

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was received electronically at the Board of Patent Appeals and Interferences on January 29, 2007. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below:

The Examiner's Answer mailed April 21, 2006 does not list the Evidence Relied Upon in the rejections of the appealed claims. On page 2 of the examiner's answer beneath the heading **(8) Evidence Relied Upon** the examiner states "[n]o evidence is relied upon by the examiner in the rejection of the claims under appeal."

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The examiner's §§ 102(b) and 103(a) rejections are based wholly or in part on an article from the LA Times and an article from Infoworld.

Therefore, before further review, the examiner must mail a PTOL-90 that includes an amended Evidence Relied Upon section, that list the references relied upon in the statement of the rejections and any other evidence relied upon by the Examiner in the rejection(s) of the appealed claims. See the Manual of Patent Examining Procedure, (MPEP)

§ 1207.02(A)(8). Appropriate correction is required.

Another matter that requires the examiner's attention before returning the application to the BPAI is the Information Disclosure Statement (IDS) filed June 3, 2004. The examiner has not initialed and dated the substitute 1449 of the IDS to indicate consideration of same.

Accordingly, it is


ORDERED that the application is returned to the Examiner

1) to issue and mail a PTOL-90 having the missing references listed under the Evidence Relied Upon section, paragraph (8);

Application 09/578,291

- 2) for proper consideration and notification to appellants of the IDS filed June 3, 2004, and
- 3) for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

By:   
PATRICK J. NOLAN  
Deputy Chief Appeals Administrator  
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PJN/vsh

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